

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

USCA Docket Number:

USDC Docket Number : 04-cv-11006

Anthony Leo

v.

Commonwealth of Massachusetts

CLERK'S CERTIFICATE

I, Sarah A Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I are the original pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 7/12/05.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on July 19, 2005.

Sarah A. Thornton, Clerk of Court

By:

Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled
case is hereby acknowledged this date: 7/19/05.

D. Baruch
Deputy Clerk, US Court of Appeals

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

APPEAL, CASREF

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-11006-JLT**

Leo v. Commonwealth of Massachusetts
Assigned to: Judge Joseph L. Tauro
Cause: 28:2254 Petition for Writ of Habeas
Corpus (State)

Date Filed: 05/11/2004
Jury Demand: None
Nature of Suit: 530 Habeas
Corpus (General)
Jurisdiction: Federal Question

Petitioner

Anthony Leo

represented by **Anthony Leo**
#2682

Worcester House of Correction
5 Paul X. Tivnan Drive
W. Boylston, MA 01583
PRO SE

V.

Respondent

**Commonwealth of
Massachusetts**

represented by **Maura D. McLaughlin**
Office of the Attorney General
Criminal Bureau, Appellate
Division
One Ashburton Place, 18th Floor
Boston, MA 02108
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*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
05/11/2004	•1	MOTION for Leave to Proceed in forma pauperis by Anthony Leo.(Jenness, Susan) (Entered: 05/19/2004)
05/11/2004	•2	FINANCIAL AFFIDAVIT by Anthony Leo. (Jenness, Susan) (Entered: 05/19/2004)
05/11/2004	•3	Table of Contents filed by Anthony Leo (Jenness, Susan) (Entered: 05/19/2004)
05/11/2004	•4	PETITION for writ of habeas corpus pursuant to 28:2254 \$ 5.00, receipt number 00000filed by Anthony Leo.(Jenness, Susan) (Entered: 05/19/2004)
05/20/2004	•5	Judge Joseph L. Tauro : ORDER entered SERVICE ORDER re 2254 Petition. Order entered pursuant to R.4 of the Rules governing Section 2254 cases for service on respondents. Answer/responsive pleading due w/in 20 days of rcpt of this order.(Abaid, Kim) (Entered: 05/20/2004)
05/26/2004	•	Return receipt received for mail sent to Thomas F. Reilly Delivered on May 24, 2004 (Abaid, Kim) (Entered: 05/26/2004)
05/26/2004	•	Return receipt received for mail sent to Cathryn A. Neaves, Esq. Delivered on May 24, 2004 (Abaid, Kim) (Entered: 05/26/2004)
06/01/2004	•6	Judge Joseph L. Tauro : ORDER entered REFERRING CASE to Magistrate Judge Marianne B. Bowler Referred for: Report and Recommendations on 2254 Petition(Abaid, Kim) (Entered: 06/01/2004)
06/07/2004	•7	MOTION for Extension of Time to July 14, 2004 to file responsive pleadings to Petition for Writ of Habeas Corpus by Commonwealth of Massachusetts. (Abaid, Kim) (Entered: 06/08/2004)

06/07/2004	• 7	Judge Joseph L. Tauro : Electronic ORDER entered granting <u>7</u> Motion for Extension of Time (Abaid, Kim) (Entered: 06/08/2004)
06/16/2004	• 8	Judge Marianne B. Bowler : ORDER To Answer entered. Deadline for filing dispositive motion in opposition is July 15, 2004. (Feeney, Eileen) (Entered: 06/16/2004)
06/18/2004	• 9	Opposition re <u>7</u> MOTION for Extension of Time to July 14, 2004 to respond filed by Anthony Leo. (Abaid, Kim) (Entered: 06/21/2004)
07/14/2004	• 10	MOTION for Extension of Time to July 20, 2004 to File Answer re <u>4</u> Petition for writ of habeas corpus (28:2254) by Commonwealth of Massachusetts. (Abaid, Kim) (Entered: 07/16/2004)
07/20/2004	• 11	MOTION to Dismiss by Commonwealth of Massachusetts.(Abaid, Kim) (Entered: 07/21/2004)
07/20/2004	• 12	MEMORANDUM in Support re <u>11</u> MOTION to Dismiss filed by Commonwealth of Massachusetts. (Abaid, Kim) (Entered: 07/21/2004)
07/20/2004	• 13	ANSWER to Complaint by Commonwealth of Massachusetts.(Abaid, Kim) (Entered: 07/21/2004)
07/20/2004	• 14	SUPPLEMENTAL ANSWER by Commonwealth of Massachusetts.(Abaid, Kim) (Entered: 07/21/2004)
08/06/2004	• 15	MOTION for Leave to File a traverse to respondents answers and an opposition to its motion to dismiss by Anthony Leo.(Abaid, Kim) (Entered: 08/09/2004)
08/09/2004	•	Judge Marianne B. Bowler : electronic ORDER entered granting <u>15</u> Motion for Leave to File (Bowler, Marianne) (Entered: 08/09/2004)
08/09/2004	• 16	APPENDIX of Additional State Court Records and Transcripts of Prior Bail Hearings by Anthony Leo. (Abaid, Kim) (Entered: 08/10/2004)

08/09/2004	•17	MEMORANDUM in Opposition re <u>11</u> MOTION to Dismiss Petition for Writ of Habeas Corpus filed by Anthony Leo. (Abaid, Kim) (Entered: 08/10/2004)
08/09/2004	•18	Traverse by Anthony Leo to <u>13</u> Answer to Complaint. (Abaid, Kim) (Entered: 08/10/2004)
08/09/2004	•19	MOTION for Stay/Abeyance of Petition for Writ of Habeas Corpus by Anthony Leo.(Abaid, Kim) (Entered: 08/10/2004)
08/09/2004	•20	MEMORANDUM in Support re <u>19</u> MOTION to Stay/Abeyance for Petition Writ of Habeas Corpus filed by Anthony Leo. (Abaid, Kim) (Entered: 08/10/2004)
09/01/2004	•21	Letter from Anthony Leo. (Abaid, Kim) (Entered: 09/02/2004)
09/08/2004	•22	Letter from Anthony Leo. (Abaid, Kim) (Entered: 09/09/2004)
09/23/2004	•24	NOTICE - Filing of Final Decision Rendered in Appeal before the Supreme Judicial Court - SJC-09074 by Anthony Leo (Abaid, Kim) (Entered: 09/27/2004)
09/24/2004	•23	Judge Marianne B. Bowler : PROCEDURAL ORDER RE: MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS #11, entered. Petitioner is ORDERED to file on or before October 4, 2004 a supplemental brief addressing merits of ground four; respondent is ORDERED to file before October 12, 2004 a supplemental brief to motion to dismiss addressing the effect of SJC's decision on arguments made in motion to dismiss. (Feeney, Eileen) (Entered: 09/24/2004)
09/27/2004	•25	Opposition to Petitioner's Filing of Massachusetts Supreme Judicial Court Ruling by Commonwealth of Massachusetts. (Abaid, Kim) (Entered: 09/29/2004)

10/06/2004	•26	MOTION for Extension of Time to October 12, 2004 to file a supplemental brief addressing merits of Ground 4 of Petition for Writ of Habeas Corpus by Anthony Leo.(Abaid, Kim) (Entered: 10/12/2004)
10/13/2004	•	Judge Marianne B. Bowler: Electronic ORDER entered granting <u>10</u> Motion for Extension of Time to Answer, nunc pro tunc, and granting <u>26</u> Motion for Extension of Time. (Bowler, Marianne) (Entered: 10/13/2004)
10/13/2004	•27	SUPPLEMENTAL BRIEF in support of Ground #4 of Petition of Habeas Corpus: 5th Amendment of US Constitution by Anthony Leo. (Attachments: # <u>1</u> Exhibit part 1# <u>2</u> Exhibit part 2)(Abaid, Kim) (Entered: 10/14/2004)
10/18/2004	•28	Supplemental Memorandum Regarding Effect of State Court Decision on Motion to Dismiss by Commonwealth of Massachusetts. (Abaid, Kim) (Entered: 10/19/2004)
11/03/2004	•29	SUPPLEMENT MEMORANDUM in Opposition to Respondents Motion to Dismiss by Anthony Leo. (Attachments: # <u>1</u> Exhibit)(Abaid, Kim) (Entered: 11/04/2004)
11/22/2004	•30	MOTION to Stay Court Proceedings by Anthony Leo. (Abaid, Kim) (Entered: 11/23/2004)
11/22/2004	•31	MEMORANDUM in Support re <u>30</u> MOTION to Stay Court Proceedings filed by Anthony Leo. (Abaid, Kim) (Entered: 11/23/2004)
11/22/2004	•32	MOTION to Grant Bail by Anthony Leo.(Abaid, Kim) (Entered: 11/23/2004)
12/02/2004	•33	MOTION for Extension of Time to 12/08/04 to File Response/Reply as to <u>30</u> MOTION to Stay, <u>32</u> MOTION to Grant Bail by Commonwealth of Massachusetts.(McLaughlin, Maura) (Entered:

		12/02/2004)
12/03/2004	•	Judge Marianne B. Bowler: Electronic ORDER entered granting <u>33</u> Motion for Extension of Time to File Response/Reply re <u>33</u> MOTION for Extension of Time to 12/08/04 to File Response/Reply as to <u>30</u> MOTION to Stay, <u>32</u> MOTION to Grant Bail. (Bowler, Marianne) (Entered: 12/03/2004)
12/07/2004	•34	NOTICE of Change of Address by Anthony Leo (Abaid, Kim) (Entered: 12/07/2004)
12/09/2004	•35	Opposition re <u>30</u> MOTION to Stay, <u>32</u> MOTION to Grant Bail filed by Commonwealth of Massachusetts. (McLaughlin, Maura) (Entered: 12/09/2004)
12/15/2004	•36	Judge Marianne B. Bowler : ORDER entered REPORT AND RECOMMENDATIONS re <u>11</u> MOTION to Dismiss filed by Commonwealth of Massachusetts is ALLOWED to the extent of dismissing grounds two and three in the petition. This court further RECOMMENDS that <u>30</u> Motion to Stay filed by Anthony Leo and <u>32</u> MOTION to Grant Bail filed by Anthony Leo is DENIED without prejudice. Objections to R&R due by 1/3/2005(Feeney, Eileen) (Entered: 12/15/2004)
12/27/2004	•37	OBJECTION to <u>36</u> Report and Recommendations filed by Commonwealth of Massachusetts. (McLaughlin, Maura) (Entered: 12/27/2004)
12/29/2004	•38	OBJECTION to <u>36</u> Report and Recommendations filed by Anthony Leo. (Abaid, Kim) (Entered: 01/03/2005)
01/03/2005	•39	MEMORANDUM in Opposition re <u>4</u> Petition for Writ of Habeas Corpus. (McLaughlin, Maura) Modified on 1/11/2005 (Abaid, Kim). (Entered: 01/03/2005)
01/05/2005	•40	EXHIBITS A and B re <u>39</u> Memorandum in Opposition to Motion, by Commonwealth of

		Massachusetts. (Abaid, Kim) (Entered: 01/10/2005)
01/05/2005	• 41	AFFIDAVIT of Joseph J. Reilly, III by Commonwealth of Massachusetts. (Abaid, Kim) (Entered: 01/11/2005)
01/07/2005	•	Judge Joseph L. Tauro : Electronic ORDER entered. ORDER APPROVING AND ADOPTING REPORT AND RECOMMENDATIONS. Action on motion: 11 Motion to Dismiss is ALLOWED to the extent of dismissing grounds two and three in the petition. 30 Motion to Stay and 32 Motion for Bail are DENIED WITHOUT PREJUDICE.(Abaid, Kim) (Entered: 01/12/2005)
01/11/2005	•	Notice of correction to docket made by Court staff. Correction: Document 39 corrected because: Changed the entry to reflect the title on the document. (Abaid, Kim) (Entered: 01/11/2005)
01/13/2005	• 42	BRIEF - Effects of the State Court Decision to Petitioner's Motion to Revisit Bail on Petition for Habeas Corpus by Anthony Leo. (Abaid, Kim) (Entered: 01/13/2005)
01/13/2005	• 43	MOTION for Revisit the Issue of Bail by Anthony Leo. (Attachments: # 1 Copy Endorsed by Judge Hillman)(Abaid, Kim) (Entered: 01/13/2005)
01/13/2005	• 44	MEMORANDUM in Support re 43 MOTION to Revisit Bail filed by Anthony Leo. (Abaid, Kim) (Entered: 01/13/2005)
01/25/2005	•	Motions terminated: 1 MOTION for Leave to Proceed in forma pauperis filed by Anthony Leo,, 19 MOTION to Stay filed by Anthony Leo,. Motions termed as Moot. (Lovett, Zita) (Entered: 01/25/2005)
01/25/2005	• 46	Response by Anthony Leo to 17 Memorandum in Opposition to Petition for Writ of Habeas Corpus, and 11 MOTION to Dismiss Petition for Writ of Habeas

		Corpus. (Abaid, Kim) (Entered: 01/27/2005)
01/25/2005	•47	MOTION for an Evidentiary Hearing by Anthony Leo.(Abaid, Kim) Additional attachment(s) added on 4/22/2005 (Saccoccio, Dianalynn). (Entered: 01/27/2005)
01/25/2005	•48	AMENDED PETITION for writ of habeas corpus pursuant to 28:2254 , filed by Anthony Leo.(Abaid, Kim) (Entered: 01/27/2005)
01/26/2005	•45	Judge Joseph L. Tauro : ORDER entered. REFERRING CASE to Magistrate Judge Marianne B. Bowler Referred for: Report and Recommendation on <u>43</u> Motion to Revisit the Issue of Bail.(Abaid, Kim) (Entered: 01/26/2005)
02/18/2005	•49	Letter from Anthony M. Leo to Sara B. Cole re: Status of Case. (Abaid, Kim) (Entered: 02/22/2005)
02/18/2005	•50	Letter re: Status of case from Anthony Leo. (Abaid, Kim) (Entered: 02/22/2005)
03/28/2005	•51	Letter from Anthony Leo. (Abaid, Kim) (Entered: 03/30/2005)
04/12/2005	•	Remark: Petitioner's mother, Ann Leo, telephoned Court's pro bono coordinator seeking case status information. Pro bono coordinator advised Ms. Leo that her inquiry would be forwarded to Judge Tauro and Magistrate Judge Bowler's courtroom clerks. (Morse, Barbara) (Entered: 04/12/2005)
04/19/2005	•52	Judge Marianne B. Bowler: Electronic Procedural ORDER entered. (Bowler, Marianne) (Entered: 04/19/2005)
04/26/2005	•53	MEMORANDUM in Opposition re <u>47</u> MOTION for Hearing, <u>43</u> MOTION for Reconsideration filed by Commonwealth of Massachusetts. (McLaughlin, Maura) (Entered: 04/26/2005)

04/27/2005	• 55	EXHIBITS A-D re <u>53</u> Memorandum in Opposition to Motion by Commonwealth of Massachusetts. (Abaid, Kim) (Entered: 05/02/2005)
04/29/2005	• 54	Judge Marianne B. Bowler: ORDER entered, recommending that respondent's request to deny the writ (Docket Entry # 39, p.11) be ALLOWED inasmuch as neither grounds one nor four warrant habeas relief. This court likewise RECOMMENDS that the motion to stay (Docket Entry # 30) and the motion for bail (Docket Entry # 32), which petitioner renewed in a recent filing (Docket Entry # 42), be DENIED. This court also RECOMMENDS that the motion to revisit bail (Docket Entry # 43) be DENIED. The motion to hold an evidentiary hearing (Docket Entry # 47) is Denied. Objections to R&R due by 5/13/2005(Bowler, Marianne) Modified on 5/2/2005 (Abaid, Kim). (Entered: 04/29/2005)
05/20/2005	• 56	OBJECTION to <u>54</u> Report and Recommendations filed by Anthony Leo. (Attachments: # 1 Exhibits) (Abaid, Kim) (Entered: 05/20/2005)
05/23/2005	•	Magistrate Judge Marianne B. Bowler no longer assigned to th case. (Saccoccio, Dianalynn) (Entered: 05/23/2005)
06/13/2005	•	Judge Joseph L. Tauro : Electronic ORDER entered. ORDER ADOPTING REPORT AND RECOMMENDATIONS for <u>32</u> Motion to Grant Bail, <u>47</u> Motion for Hearing filed by Anthony Leo, and <u>43</u> Motion for Reconsideration filed by Anthony Leo. (Abaid, Kim) (Entered: 06/15/2005)
06/14/2005	• 57	Judge Joseph L. Tauro : ORDER entered. JUDGMENT in favor of Respondent against Petitioner(Abaid, Kim) (Entered: 06/15/2005)
06/24/2005	• 58	Letter from Anthony Leo. (Abaid, Kim) (Entered: 06/27/2005)

07/07/2005	•59	Letter to Mr. Leo from Pro Se Office informing Mr. Leo that employees of the Court are prohibited from providing legal advice on how to proceed with lawsuits. Courtesy copies of Rule 4 of Federal Rules of Appellate Procedure and docket sent to Mr. Leo. Letter also provides address and telephone number for Massachusetts Correctional Legal Services. (Morse, Barbara) (Entered: 07/07/2005)
07/12/2005	•60	NOTICE OF APPEAL as to <u>57</u> Judgment by Anthony Leo. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 8/1/2005. (Abaid, Kim) (Entered: 07/13/2005)
07/12/2005	•61	MOTION for Certificate of Appealability by Anthony Leo.(Abaid, Kim) (Entered: 07/13/2005)